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In the Supreme Court of the United States

OCTOBER TERM, 1970

No. 507

CALIFORNIA DEPARTMENT OF HUMAN RESOURCES DEVELOPMENT, et al.,
Appellants,

v.

JUDITH JAVA, et al.,
Appellees.

On Appeal from the United States District Court
of the Northern District of California

Motion to Affirm

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Appellees, Judith Java, et al., respectfully move the Court, pursuant to Rule 16(1)(c) of the Rules of the Supreme Court, to affirm the judgment below on the ground that the questions are so unsubstantial as not to warrant further briefs and argument.

ARGUMENT

I. Unless There Is Some Fundamental Distinction Between Public Assistance and Unemployment Insurance, the District Court Below Was Entirely Correct in Holding That Goldberg v. Kelly, 397 U.S. 254 (1970) Was Controlling in the Case at Bar.

II. The Distinctions That Appellants Raise in Order to Differentiate Public Assistance From Unemployment Insurance Are Patently Frivolous.

A. Appellants seek to distinguish *Goldberg* by stating that there was a "crucial factor of need" present in *Goldberg* that does not exist in the case at bar, and that this distinction is of such considerable importance that a delay of unemployment insurance payments is tolerable, whereas a delay of public assistance benefits is not. (J.S. pp. 13-15). This contention is in complete derogation of the legislative purposes of the unemployment insurance and public assistance programs. Both programs had their inception in the Social Security Act of 1935—a comprehensive package of legislation designed to counteract the depression. Public assistance, and particularly AFDC assistance, was created to protect that group of children in families *without* an "employable" parent. Unemployment insurance, on the other hand, was designed to benefit those families in which there was an employable adult who was temporarily unemployed because of the economic crisis. The important point is not that need was considered to be a more crucial factor in one program than in the other. It is obvious that need was an equally important factor in both situations. See e.g. Certified Record, plaintiff's Brief in Support of Motion for Preliminary Injunction, pp. 2-7. The important fact is that AFDC was created to meet one type of need and that unemployment insurance was designed to meet another type of need—and that both programs were complementary in nature and design. See e.g. *King v. Smith,* 392 U.S. 309, 327-333, (1968). Consequently, any attempt to distinguish

the two programs on the basis of need is frivolous and totally without merit.

B. Appellants further distinguish the case at bar from *Goldberg* by contending that there is an element present in the area of unemployment insurance that did not exist in the fact pattern of *Goldberg*: This is the private interest of the employer. (J.S. pp. 10-12). The Record below and appellants' own statistics reveal that this third party interest of the individual employer is an indirect one and certainly not of enough significance to substantiate the distinction that appellants have drawn. The individual employer is a member of a large class of employers. If the District Court decision appealed from is affirmed, and payment to an eligible claimant is required during the period in which the previous employer's appeal is pending, that employer will suffer no direct monetary harm. The only feasible financial loss would be a collective one, borne by and spread over all California employers. It never has been established that such a loss would occur if the Court affirms the three-judge court's decision. This, coupled with the fact that only a very small number of initial determinations of claimant eligibility are appealed by employers[1] corroborates appellees' contention that the interest of the employer has been exaggerated and that it is not a substantial ground for distinguishing *Goldberg*.

C. Appellants' final argument in distinguishing *Goldberg* from the case at bar is that, unlike in the *Goldberg* situation, a claimant's right to eligibility for unemployment insurance benefits does not vest after the initial determination of eligibility by appellant Department; they argue that this right vests only after the previous employer has been given an opportunity to appeal the initial deter-

1. Appellants have stated that in 1968 only two percent (2%) of the initial determinations favorable to claimants were appealed by employers. (J.S. p. 6, n. 1.)

mination and to have a hearing before a referee. (J.S. pp. 12-13). This precise issue—i.e. when does a claimant's right to receive benefits actually vest pursuant to California law—was before the three-judge court below. In resolving this issue, the court below carefully reviewed and analyzed the actual practices of appellant California Human Resources Development Department (J.S. App. A, pp. 3-6), and it held that under California law payments of unemployment insurance benefits became due "upon [appellant Department's] initial determination of eligibility". (J.S. App. A, p. 5).

The District Court of the Northern District of California is composed of judges especially versed in the jurisprudence of, and sitting in the State of California. Its decision that benefits become due upon an initial determination of eligibility was based upon their interpretation of California law. Such an interpretation is entitled to great weight, *Reitz v. Mealgy*, 314 U.S. 33, 39, (1941); *Wayne County Board of Review v. Great Lakes Steel Corp.*, 300 U.S. 29, (1937), and does not warrant plenary review by this Court.

CONCLUSION

For the foregoing reasons, the judgment of the court below should be affirmed.

Respectfully submitted,

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